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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/759,767	01/16/2004	Peter Unger	B0049-US03	8356
24994	7590	05/28/2004	EXAMINER	
GAMBRO, INC PATENT DEPARTMENT 10810 W COLLINS AVE LAKEWOOD, CO 80215			DRODGE, JOSEPH W	
			ART UNIT	PAPER NUMBER
			1723	

DATE MAILED: 05/28/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

10/759,767

Applicant(s)

UNGER ET AL.

Examiner

Joseph W. Drodge

Art Unit

1723

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 16 January 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-22 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-4, 6, 7, 9-14 and 17-19 is/are rejected.
- 7) ☒ Claim(s) 5, 8, 15, 16 and 20 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 0104.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

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The disclosure is objected to because of the following informalities: In the Preliminary Amendment received with the Information Disclosure Statement of 01/16/04, corrections to Specification, page 1, "now Patent 6,689,042" needs to be added to the Insertion.

Appropriate correction is required.

The abstract of the disclosure is objected to because it is unduly brief and non-descriptive. Correction is required. See MPEP § 608.01(b).

Claims 7 and 8 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claims 7 and 8 "the opening" lacks antecedent basis.

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 11, 13 and 17 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1,4,5 and 9 of U.S. Patent No. 6,689,042. Although the conflicting claims are not identical, they are

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not patentably distinct from each other because they are claiming substantially the same combination of structural features with some differences in terminology.

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

7(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-4,6 and 7 are rejected under 35 U.S.C. 102(b) as being anticipated by Unger et al patent 5,114,396.

Unger et al '396 disclose a rotor shaft shown in figure 3 having a hollow, central upper portion 18 to receive secondary bags and a bowl 24, having a separation compartment 17 to receive separation bag 2. Also disclosed are pinch valves 21 and 22 [claim 2], control/column 4, lines 33-34 [claim 3], means to selectively squeeze the separation bag 25 [claim 4], frustoconical support surfaces shown in figure 3 [claim 6] and which flare below the central compartment opening [claim 7].

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

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1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

Claims 9-14, 17-19, 21 and 22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Unger et al patent 5,114,396 in view of Unger et al patent 4,950,401. For claims 9 and 10, '396 further discloses the main separation bag 2 having an inner and outer periphery and coupled via tubes to secondary bags 3 and 4. The claims also require a container for receiving the secondary bags in the central compartment. Unger '401, drawn to centrifuging of either liquid/liquid or liquid/solid mixtures also teaches container 28 receiving separation containers 29 and 30 and mounted in an upper, central compartment of rotor body 15 (column 8, lines 8-14 and column 5, line 36-column 6, line 24). It would have been obvious to one of ordinary skill in the art to have modified the system of '396, by incorporating the claimed container, as taught in '401, to control the movement and flexing of the secondary bags during centrifuging. Regarding

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claim 11, also see the sleeves 11 and 14 having flanges shown by '401. Unger et al '401 also teaches plastic material in column 2, lines 14-15 [claim 12], the sleeve being in a central compartment [claim 13], spacing elements in the form of bearings 12 and 13 [claim 14].

Unger et al '396 further discloses permanent heat sealing of bags at column 3, lines 35-36, i.e. 'welding' [claim 17], one-way valves 8 and 11 [claim 18], the tube conduit 10 connecting with separation bag inner periphery at column 3, lines 25-26 [claim 19], and bags of plastic material [claim 22]. With regard to claim 21, the contents of the bags do not constitute structural limitations.

#### ALLOWABLE SUBJECT MATTER

Claims 5,8,15,16 and 20 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Claim 5 distinguishes for a hydraulic system having a duct extending through the shaft.

Claim 8 distinguishes for claimed location of the frusto-conical surface.

Claim 15 distinguishes for the bag being secured to a flange at separation bag inner periphery.

Claim 16 distinguishes for the separation bag having holes to receive protruding pins of flange upper surface.

Claim 20 distinguishes for the branched tube arrangement.

Any inquiry concerning this communication or earlier communications from

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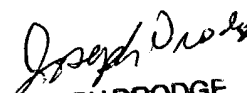
the examiner should be directed to Joseph Drodge at telephone number 571-272-1140. The examiner can normally be reached on Monday-Friday from 8:30 AM to 5:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Wanda Walker, can be reached at 571-272-1151. The fax phone number for the examining group where this application is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either private PAIR or Public PAIR, and through Private PAIR only for unpublished applications. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have any questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

JWD

May 25, 2004

  
JOSEPH DRODGE  
PRIMARY EXAMINER